IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.141 OF 2002

Dhondiba Ramchandra Parit ... Appellant

V/s

Sou Manabai alias Parvatibai
w/o Shivaji Ashtekar ... Respondent

Shri R.S. Ghadge for the appellant.

Shri M.R. Suryawanshi for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 19TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The appellant has challenged the order passed by the learned Addl. District Judge, Gadhinglaj dated 19.12.2001 wherein the appeal was partly allowed and decree passed by the Civil Judge, Jr.Divn., Chandgad, in R.C.S. No. 69 of 1993 was modified. The Civil Court earlier had directed that the plaintiff was entitled to 1/3 share in the suit house property of G.P. No.46 situated at village Ibrahimpur, Tal. Chandgad and

Commissioner was appointed for the same. Hence, the appeal was carried to the District Court. The learned District Judge adjudicated the appeal and modified the order of the lower Court and it was held that the plaintiff was entitled to partition and separate possession of 1/3 share in suit property "A" i.e. agricultural land and "B", house property.

3. The appellants being aggrieved by the said judgment and order have preferred this appeal inter-alia submitting that the tenanted land could not be subjected to partition by decree of Civil Court when there is specific provision laid down in B.T. & A.L. Act for eviction of tenant. In other words, the decree for possession of the tenanted landed property is sought to be challenged in this proceeding.

4. The so called substantial question of law sought to be raised is whether the agricultural land in possession of tenant which is declared by the revenue authority, subjected to be partitioned by the decree of Civil Court when there is specific provision laid down in B.T. & A.L. Act for eviction of tenant ? However, in this regard it must be noted that there is no bar in subjecting the tenanted land for partition provided the

possession of the tenant is protected by virtue of provisions of B.T. & A.L. Act and Civil Court order for separate possession of the suit property shall be subject to provision of the said Act. In view of this position, there need not be any grievance of the appellant and it appears that the stand taken for the purpose of filing this appeal appears to be misconstrued. In view of this position, the appeal has no merit and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

C.c. expedited.

.....